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by some other one given, and that there was evidence not certified as part of record which showed offense was committed within jurisdiction of trial court.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 615; 5 Va.-W. Va. Enc. Dig. 379.]

**9. Criminal Law (§§ 1121 (4), 1122 (1)\*)—Bill of Exceptions—Construction.**—Where trial court, to bill of exceptions, certified that following evidence was introduced by commonwealth to maintain issue, and then set out evidence, which, in light of other bills, could not have been intended as anything but a certificate of all evidence, and such matter was followed by statement that court instructed as follows, setting out a single instruction purporting to apply to evidence as whole, bill of exceptions must be taken as embracing all evidence and all instructions.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 380.]

Error to Corporation Court of Hopewell.

R. J. Byrd was convicted of unlawfully slandering and abusing another's wife by using vulgar and obscene language to and about her in the presence of such other, and he brings error. Judgment reversed, and cause remanded for new trial.

*W. L. Devany, Jr.*, of Hopewell, for plaintiff in error.  
*Ino. R. Saunders, Atty. Gen.*, for the Commonwealth.

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MOORE v. NORFOLK & W. RY. CO.

March 13, 1919.

[98 S. E. 635.]

**1. Venue (§ 32 (1)\*)—Objection to Jurisdiction—Time of Making.**—Where defendant was served with process according to Code 1904, §§ 3225, 3227, and permitted the action to go to judgment by default, a subsequent objection to venue of the action came in the wrong form and too late, since section 3260 expressly provides that such objection must be taken by plea in abatement.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 12, 22.]

**2. Venue (§§ 21, 32 (1)\*)—Jurisdiction—Statute—Waiver.**—Code 1904, §§ 3214, 3215, providing actions may be brought in any county or corporation wherein the cause of action arose, where defendants reside, or where defendant corporation's principal officer or officers reside, do not confer jurisdiction upon any courts, but confer upon defendant a privilege as to venue of trial which may be waived by failure to plead in abatement as provided by section 3260.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**3. Venue (§ 8\*)—Transitory Personal Actions.**—Under Code 1904, § 3058, the circuit court had original and general jurisdiction of all civil cases at law, including a transitory action for personal injuries, regardless of where the cause of action arose, where the defendant company was served with process under sections 3225 and 3227, and jurisdiction of the cause does not depend upon sections 3214 and 3215.

**4. Abatement and Revival (§ 3\*)—Courts (§ 39\*)—Jurisdiction—Mode of Objection.**—Code 1904, § 3260, requiring objection to certain defects of venue affecting jurisdiction to be made by plea in abatement, has no application where the defendant is not before the court, nor where the subject-matter of the action or suit, although within its territorial jurisdiction, is not in fact before the court, and in such cases the defect may be pleaded in bar or by other defense, as by motion to quash process of summons or dismiss action. The court should dismiss upon its own motion where such facts appear.

**5. Pleading (§ 35\*)—Venue—Surplusage.**—In an action for personal injuries, an allegation that the injuries were inflicted in the city of Lynchburg was a wholly unnecessary averment for the purpose of laying venue, and under Code 1904, § 3244, may be treated as an allegation of original venue or fact venue not affecting the place of trial, or as matter of description, or mere surplusage.

Error to Circuit Court, Campbell County.

Action by Thomas W. Moore against the Norfolk & Western Railway Company. Judgment for plaintiff by default, and defendant's motion to dismiss the case for lack of jurisdiction was allowed, and plaintiff's motion to be allowed to amend his declaration was overruled, and plaintiff brings error. Reversed.

*A. H. Light*, of Rustburg, for plaintiff in error.

*F. S. Kirkpatrick*, of Lynchburg, and *W. H. Mann*, of Petersburg, for defendant in error.

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VIRGINIAN RY. CO. *v.* et al. AVIS.

March 13, 1919.

[98 S. E. 638.]

**1. Railroads (§ 73 (4)\*)—Construction—Use for Depot Purposes.**—Under deed conveying land to railway company "to be used for depot purposes and facilities connected therewith," held, company was to use such part of land as it needed for a depot and residue exclusively for facilities connected therewith, so that company could not lease the residue to a third person for other uses.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 550.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.